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In the Supreme Court of the United States

OCTOBER TERM, 1979

STERRITT TRUCKING, INC. AND
JAMES K. STERRITT, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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QUESTION PRESENTED

Whether, in the circumstances of this case, the court of appeals was empowered to hold the Company's owner and managing officer and its corporate alter ego responsible for complying with Board orders that had been enforced by the court, even though they were not specifically named in those orders.

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OPINIONS BELOW

The judgment order of the court of appeals (Pet. App. A1-A4) is unreported. The prior judgments of the court of appeals enforcing the Board's orders are also unreported. The decision and order and supplemental decision and order of the National Labor Relations Board are reported at 215 N.L.R.B. 769 and 224 N.L.R.B. 1240.

JURISDICTION

The judgment of the court of appeals was entered on March 25, 1980. The petition for a writ of certiorari was filed on June 23, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provision of the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, is set forth at Pet. 2-4.

STATEMENT

On December 16, 1974, the Board issued a decision determining that James K. Sterritt, Inc. and Concrete Haulers, Inc.—companies which, together with petitioner Sterritt Trucking, Inc., were managed and controlled by petitioner James K. Sterritt and which constituted a single employer for purposes of the National Labor Relations Act—had violated Sections 8(a)(1) and (3) of the Act, 29 U.S.C. 158(a)(1) and (3). James K. Sterritt, Inc. and Concrete Haulers, Inc. were found to have urged employees to by-pass union representatives and deal directly with them, to have threatened employees with loss of work for engaging in union activities, and to have refused to recall seven employees after a layoff because of their union activity. 215 N.L.R.B. 769, 775. The Board's order required "James K. Sterritt, Inc., and Concrete Haulers, Inc., its officers, agents, successors, and assigns" to cease and desist from engaging in these unfair labor

practices, to reinstate the seven discriminatees, and to reimburse them for lost earnings. *Id.* at 775-776. On October 17, 1975, the court of appeals affirmed the Board's findings and enforced its order (Pet. App. A20-A21).

The Board then calculated the amount of back pay and other benefits due the discriminatees and entered a supplemental order requiring the parties named in the original order to pay the specified sums. 224 N.L.R.B. 1240. On December 30, 1976, the court of appeals entered a judgment enforcing the Board's supplemental order (Pet. App. A21).

On August 31, 1977, the Board filed a motion in the court of appeals seeking a civil contempt adjudication. The motion named James K. Sterritt, Inc. and Concrete Haulers, Inc. (hereafter "JKS/CHI") as "respondents," and Sterritt Trucking, Inc. and James K. Sterritt as "additional respondents in contempt" (Pet. App. A5). The Board's motion alleged that James K. Sterritt had at all material times been the "principal owner, officer, director and managing agent" of the three companies, and that, in this capacity, he was responsible for their contumacious refusal to satisfy the backpay judgment (Pet. App. A7). In addition, the motion alleged that, following entry of the court's supplemental back pay judgment, Sterritt had altered his business in such a way as to continue the operations of JKS/CHI under the name of Sterritt Trucking, Inc., an entity "not expressly named as a respondent in either of the Court['s] judgments" (Pet. App. A8). The Board asserted that Sterritt had thereby "creat[ed] a cloak behind which [he] attempted and still attempts to continue operations free of liability for compliance with the backpay provisions of the judgment * * *" (*ibid.*). The respondents in the court of appeals filed an affidavit admitting that Sterritt "has always had

control of" the three corporations, but denying that Sterritt individually and Sterritt Trucking, Inc. have ever used their positions of control over JKS/CHI to thwart the relief sought by the Board (Pet. App. A13).The affidavit further asserted that the lack of compliance was solely due to the fact that JKS/CHI "are without funds to satisfy the judgment" (*ibid.*).

The court of appeals referred the contempt motion to a special master who conducted a hearing on September 12 and 13, 1978. On July 19, 1979, the special master issued his report, finding that the corporate respondents were a single employer and that Sterritt Trucking, Inc., "as the continuation of [JKS/CHI], is along with the controlling stockholder, Sterritt himself, liable for the outstanding backpay debt" (Pet. App. A23). The special master also found that Sterritt had "manipulated the corporations as though they were part of himself" and that he had "freely pierced the corporate veil whenever it suited his convenience" (Pet. App. A22-A23). Finally, the special master found that the parties alleged to be in contempt had failed to establish their claim of lack of financial ability to satisfy the judgments, and that "the integrated enterprise, particularly Sterritt and [Sterritt Trucking, Inc.] have diverted funds from the enterprise which could have and should have been allocated towards satisfaction of the judgment" (Pet. App. A24-A25, A33).

Consistent with these findings, the special master recommended that the corporate respondents and Sterritt be adjudged in civil contempt for failing to comply with the court's prior judgments and that "respondents and any other person or corporation found to be their successor or alter ego" be required, *inter alia,* to "forthwith pay[] the discriminatees the amounts" required by those judgments (Pet. App. A25-A26).

On March 25, 1980, the court of appeals entered its order adjudging James K. Sterritt, Inc., Concrete Haulers, Inc., Sterritt Trucking, Inc., and James K. Sterritt to be in civil contempt. The court directed them to take the actions recommended by the special master (Pet. App. A1-A4).

ARGUMENT

Petitioners contend (Pet. 7) that the court of appeals lacked jurisdiction to enter an order against Sterritt Trucking, Inc. and James K. Sterritt, because, although they were named in the contempt motion, they were not specifically named in the earlier Board orders or in the court judgments enforcing those orders. There is no merit to this contention.

It is well established that, under appropriate circumstances, "liability for compliance with a judicially enforced unfair-labor-practice order may be imposed upon parties not themselves charged in the initial proceedings." *NLRB* v. *C.C.C. Associates, Inc.*, 306 F. 2d 534, 539 (2d Cir. 1962). In particular, when "corporations are not what they appear to be * * * but [rather are] divisions or departments of a 'single enterprise' * * * jurisdiction over the affiliated corporations * * * exist[s] in contempt proceedings." *NLRB* v. *Deena Artware, Inc.*, 310 F. 2d 470, 474 (6th Cir. 1962), following remand, 361 U.S. 398 (1960). Corporations are deemed to be parts of a "single enterprise" when there is "interrelation of operations, common management, centralized control of labor relations and common ownership." See *Radio Union* v. *Broadcast Service*, 380 U.S. 255, 256-257 (1965); see also *NLRB* v. *A.E. Nettleton Co.*, 241 F. 2d 130, 131 (2d Cir. 1957). In the present case, the court of appeals adopted the special master's finding (Pet. App. A23) that the corporations charged with contempt were in fact "a

single enterprise and employer." Consequently, compliance by Sterritt Trucking, Inc., was properly ordered by the court of appeals.

The court of appeals also correctly held that petitioner James Sterritt was liable in contempt in his individual capacity. As this Court's decisions confirm, "[a] command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience and may be punished for contempt." *Wilson* v. *United States,* 221 U.S. 361, 376 (1911). See also *NLRB* v. *Hopwood Retinning Co.,* 104 F. 2d 302 (2d Cir. 1939); *NLRB* v. *Trans Ocean Export Packing, Inc.,* 473 F. 2d 612, 617-618 (9th Cir. 1973); *NLRB* v. *Johnson Mfg. Company of Lubbock,* 511 F. 2d 153, 154-156 (5th Cir. 1975). As the special master expressly found, ultimate responsibility for the corporate respondents' disobedience of the judgments lies with Sterritt. For this reason, the court properly ordered Sterritt, along with the corporations, to comply with the prior judgments.

Contrary to petitioners' contention (Pet. 7-8), the mid-hearing statement of Board counsel (Pet. App. A49-A51) does not amount to a waiver of the Board's claim against Sterritt. Counsel's statement was addressed to only one of the Board's theories concerning Sterritt's personal liability—*i.e.,* that Sterritt was liable for back pay to the extent that he had "siphoned off" corporate assets. This statement had no bearing on the Board's second theory of liability—*i.e.,* that Sterritt was liable for the full amount of the backpay obligations because he had "manipulated the corporations as though they were part of himself" and had "freely pierced the corporate veil whenever it suited

his convenience." The special master predicated Sterritt's personal liability on both of these grounds (Pet. App. A22-A23).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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